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December 19, 1997


Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Rm. 222
Washington, D.C. 20554

Dear Ms. Salas:

Pursuant to the September 19 Public Notice, enclosed please find an original, six copies and a diskette copy of U S WEST's Reply Comments in CC 97-231. Please date stamp and return the duplicate copy also provided with this filing.

Should you have any questions regarding the diskette, please call me at the above number.

Sincerely,



Rebecca W. Ward

Enclosure

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Reply Comments of U S WEST, Inc.
BellSouth Corporation
State of Louisiana
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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DEC 19 1997

FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc., and) CC Docket No. 97-231
BellSouth Long Distance, Inc., for)
Provision of In-Region, InterLATA)
Services in Louisiana)

**REPLY COMMENTS OF U S WEST, INC.
ON APPLICATION BY BELL SOUTH TO PROVIDE
IN-REGION INTERLATA SERVICES IN LOUISIANA**

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SUMMARY

U S WEST, Inc. supports BellSouth's position that interconnection agreements with PCS providers entitle BellSouth to proceed under Track A in seeking authority to provide interLATA services in the State of Louisiana. Section 271(c)(1)(A) of the Telecommunications Act of 1996 does not require facilities-based providers to purchase unbundled network elements or resale services from a BOC before a provider qualifies to be regarded as a competing Track A provider, notwithstanding the contentions of some commentators in this proceeding. Moreover, Section 271(c)(1)(A) does not require end-user customers to use the services provided by another provider as the sole source of basic local exchange services before the provider qualifies to be regarded as a competing Track A provider.

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**REPLY COMMENTS OF U S WEST, INC.
ON APPLICATION BY BELL SOUTH TO PROVIDE
IN-REGION INTERLATA SERVICES IN LOUISIANA**

U S WEST, Inc. ("U S WEST") hereby submits its Reply Comments in support of BellSouth's Application to provide interLATA services in Louisiana.¹ U S WEST limits the scope of its comments to whether requests for access and interconnection from providers of Personal Communications Services ("PCS") represent "qualifying requests" for purposes of Track A under Section 271(c)(1)(A)² of the Telecommunications Act of 1996.

¹ Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana, filed Nov. 6, 1997 ("BellSouth").

² 47 U.S.C. § 271(c)(1)(A).

I. REQUESTS FOR ACCESS AND INTERCONNECTION FROM PCS PROVIDERS ARE "QUALIFYING REQUESTS," EVEN THOUGH THEY MAY NOT PURCHASE UNBUNDLED NETWORK ELEMENTS, DIRECTORY ASSISTANCE SERVICE, OPERATOR SERVICES, AND OTHER CHECKLIST ITEMS FROM THE BELL OPERATING COMPANY ("BOC") AND EVEN THOUGH THEY ARE NOT USED BY END-USER CUSTOMERS AS THE SOLE SOURCE OF BASIC LOCAL EXCHANGE SERVICE

BellSouth contends that it is entitled to base its Application to provide interLATA services in Louisiana on Track A,³ because it has entered into interconnection agreements with three facilities-based carriers -- PrimeCo Personal Communications, Sprint Spectrum, and MereTel Communications -- who use their own facilities exclusively to provide telephone exchange service to business and residential customers.⁴ U S WEST agrees with BellSouth's contention.⁵

To support a Track A Application, BellSouth says "that [an] unaffiliated carrier must: (1) have an 'agreement[t] that has been approved under section 252 of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities;' (2) be a 'competing provide[r] of telephone exchange service (as defined in section 153(47)(A) of this title), but excluding exchange access;' (3) serve residential and business subscribers; and (4) offer service exclusively or predominantly over its own

³ Id.

⁴ BellSouth at 8.

⁵ However, "services provided pursuant to Subpart K of Part 22 of the Commission's regulations (47 C.F.R. § 22.901 et seq.) [i.e., cellular services] shall not be considered to be telephone exchange services" for purpose of Track A. 47 U.S.C. § 271(c)(1)(A).

telephone exchange service facilities.”⁶ The three PCS providers in Louisiana meet these requirements.

Predictably, interexchange carrier (“IXC”) commentators unanimously attack BellSouth’s position, because they regard it as unconventional and not consistent with the characteristics which they believe a Track A provider should exhibit. Most of the IXC commentators believe that Track A not only requires the BOC to show that it has an agreement with a wireline provider but that the wireline provider also purchases more than just access and interconnection from the BOC and that the competing provider is an end-user customer’s sole source of basic local exchange service.

For example, MCI says: “PCS providers generally do not need much more from the BOC than interconnection -- many critical checklist requirements such as unbundled loops are inapplicable to PCS providers.”⁷ “PCS providers use entirely different technology than the BOC and price their services very differently.”⁸ “PCS is not yet ‘perceived as a wireline substitute.’”⁹

WorldCom agrees with MCI, based upon what PCS providers need to purchase from a BOC: “[T]he Commission should determine that PCS providers are

⁶ BellSouth at 9.

⁷ Comments of MCI Telecommunications Corporation, filed Nov. 25, 1997 at 4 (“MCI”).

⁸ Id. at 5.

⁹ Id. citing to the Second Annual Report and Analysis of Competitive Market Conditions, FCC 97-75, at 55, rel. Mar. 25, 1997.

not ‘competing providers’ because the interconnection and access requirements needed by PCS providers are significantly different from those of potential landline competitors.”¹⁰ It agrees with MCI’s conclusion that some facilities-based providers who provide residential and business service, such as PCS providers, are ineligible to make a “qualifying request” under Track A, because these facilities-based providers do not conform to the IXCs’ expectations of what characteristics a qualifying Track A provider must exhibit. For example, WorldCom says: “[T]he PCS provider does not have to order unbundled loops or unbundled switching. Nor is there any problem of coordinating cutovers. Typically, the PCS customer also does not want number portability (since the PCS number is usually a new number, with the customer retaining his old number for his wireline connection). In addition, the PCS number frequently is not listed, so that the customer does not require directory listing.”¹¹ In addition, “OSS [operational support systems] is simply not a significant issue for PCS providers.”¹² Even though PCS providers represent a class of facilities-based providers who provide residential and business service using predominantly or exclusively their own facilities, WorldCom dismisses PCS providers as “irrelevant”¹³ for purposes of Track A.

¹⁰ Comments of WorldCom, Inc., filed Nov. 25, 1997 at 8 (“WorldCom”).

¹¹ Id. at 6 (footnote omitted).

¹² Id.

¹³ Id. at 8.

ALTS¹⁴ and CompTel¹⁵ agree with MCI's, and WorldCom's attack against PCS providers as ineligible Track A providers.

On the other hand, Sprint admits that "BellSouth's proposition that 'Track A does not require that the competitor's service be equivalent in every respect to the BOC's is correct'"¹⁶ And even MCI concedes that "Congress did not expressly foreclose a BOC from relying on PCS providers to meet the requirements of section 271(c)(1)(A)"¹⁷

BellSouth correctly observes, quoting from the Commission's Michigan

¹⁴ Comments of the Association for Local Telecommunications Services, filed Nov. 25, 1997 at 3 ("ALTS").

¹⁵ Opposition of the Competitive Telecommunications Association, filed Nov. 25, 1997 at 14 ("CompTel").

¹⁶ Petition to Deny of Sprint Communications Company L.P., filed Nov. 25, 1997 at 18 ("Sprint"). On the other hand, AT&T stoically refuses to acknowledge that Section 271(c)(1)(A) does not require a Track A competing provider's service to be equivalent to the BOC's wireline service. AT&T says: "The limitations of PCS as offered today simply make it impractical to use as the sole source of basic local exchange service to most business and residential users." Comments of AT&T Corp., filed Nov. 25, 1997 at 68 ("AT&T").

¹⁷ MCI at 9. The Department of Justice makes the same observation: "The 1996 Act specifically provides that cellular services 'shall not be considered to be telephone exchange services' for purposes of Track A, 47 U.S.C. § 271(c)(1)(A), but it does not specifically address the status of PCS under Track A. While the Commission has not yet determined the effect of this 'cellular exclusion' on the status of PCS providers under Track A, this exclusion lends support to the claim that PCS should be considered 'competing telephone exchange service' under Track A, following the statutory construction principle of 'expressio unius est exclusio alterius.'" Evaluation of the United States Department of Justice, filed Dec. 10, 1997 at 5-6 (footnotes omitted).

Order:¹⁸ “As finally enacted, section 271(c)(1)(A) requires only that a facilities-based provider of telephone exchange service (other than exchange access) ‘actually be in the market’ and compete for customers in a geographic locale served by the BOC.”¹⁹ The Commission did not say that the competitive provider’s service must be used “as the sole source of basic local exchange service,”²⁰ which the IXC’s in this proceeding believe is a requirement imposed upon a Track A competing provider by Section 271(c)(1)(A).

The IXC’s contention that PCS providers cannot be regarded as competing providers under Track A, because PCS service is not used today by customers as the sole source of basic local telephone service telephone, is absurd and it is plainly not based upon what Section 271(c)(1)(A) says or requires. Moreover, even though the PCS providers which BellSouth offers as Track A providers may not purchase unbundled network elements or require substantial OSS support from BellSouth, they nevertheless “do compete in an economic sense with BellSouth’s wireline operations for local customers in Louisiana.”²¹ Based upon this, PCS providers

¹⁸ In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, rel. Aug. 19, 1997 (“Michigan Order”). The Commission said that a competitor need not meet “any specified level of geographic penetration” (id. ¶ 76) or have any particular market share, but must “be said to be an actual commercial alternative to the BOC” and “actually be in the market and operational.” Id. ¶ 75.

¹⁹ BellSouth at 14.

²⁰ AT&T at 68.

²¹ BellSouth at 10.

satisfy the requirement in Section 271(c)(1)(A) that a Track A provider be a competing provider.

PCS providers plainly do not conform to the IXC's expectations of what characteristics a qualifying Track A provider must exhibit. However, the IXC's expectations are not grounded in the language or the requirements of Section 271.²²

II. OTHER COMPETING PROVIDERS OF TELEPHONE EXCHANGE SERVICE WHO USE THEIR OWN FACILITIES EITHER EXCLUSIVELY OR PREDOMINANTLY TO PROVIDE RESIDENTIAL AND BUSINESS SERVICE WOULD ALSO BE DISQUALIFIED AS TRACK A PROVIDERS IF THE COMMISSION ADOPTS THE IXCS' VIEWS

Many incumbent local exchange carriers ("ILEC") who have historically served areas adjacent to the service areas of a BOC are now expanding the geographic scope of their operations through overbuilding by constructing facilities in the BOC's service areas to provide residential and business service. Like the PCS providers in Louisiana, these ILECs are using their own facilities exclusively. They do not purchase unbundled loops from the BOC, because they are constructing their own. They do not purchase unbundled switching or transport from the BOC.

²² In the Oklahoma Order, the Commission described the characteristics of what it called a "qualifying request" for purposes of foreclosing Track B and requiring a BOC to proceed under Track A: "We conclude that a "qualifying request" under section 271(c)(1)(B) is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A). . . . [S]uch a request need not be made by an operational competing provider [r]ather, the qualifying request may be submitted by a potential provider of telephone exchange service to residential and business subscribers." In the Matter of Application of SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA

because they have their own switches and they self-provision their own transport. They do not purchase operator services or directory assistance from the BOC, because they already offer these services. They do not purchase listings in the BOC's white pages directory, because they already publish their own directory.

Again however, based upon the criteria which AT&T, MCI, and WorldCom believe are significant, such ILECs would not qualify as competing Track A providers, because they do not purchase unbundled network elements, or operator services, or directory assistance, or other Checklist items from the BOC. However, the PCS providers in Louisiana and the ILECs in the example above compete in an economic sense with the BOC's wireline operations for local customers. They are all Track A competing providers for purposes of Section 271(c)(1)(A). Moreover, this Commission has plainly said that Section 271(c)(1)(A) "does not require that each [interconnection] agreement contain all elements of the competitive checklist" for Track A to be satisfied.²³ AT&T, MCI, and WorldCom appear to be contending the contrary.

Section 271(c)(1)(A) describes the characteristics which a Track A provider must exhibit. The Commission should be circumspect about suggestions, such as those made by AT&T, MCI, WorldCom, CompTel, and ALTS, that there are additional defining characteristics of Track A providers. If the Commission adopts

Services In Oklahoma, Memorandum Opinion and Order, 12 FCC Rcd. 8685, 8701-2 ¶ 27 (1997) ("Oklahoma Order").

²³ Michigan Order ¶ 73.

these IXCs' suggestions about why PCS providers do not qualify as Track A providers, the Commission will create a definition for Track A providers which is unrealistic and irrational and which bears no relation to how providers choose to enter the local market to provide local exchange services or to why end user customers choose to do business with these providers. There is no all-purpose litmus test which can be used to describe the characteristics of a Track A competing provider and the Commission should not attempt to do so.

The IXCs' suggestions are at odds with the plain language of Section 271(c)(1)(A) and are wrong.

III. CONCLUSION

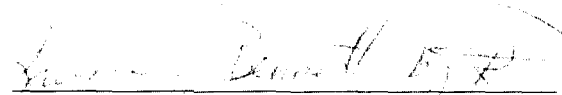
For the reasons discussed herein, U S WEST agrees that PCS providers satisfy the requirements in Section 271(c)(1)(A) to be regarded as Track A providers

and that BellSouth may base its Application to provide interLATA services in
Louisiana on Track A.

Respectfully submitted,

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December 19, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 19th day of December, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC. ON APPLICATION BY BELL SOUTH TO PROVIDE IN-REGION INTERLATA SERVICES IN LOUISIANA*** to be served, via United States Mail, ** postage pre-paid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

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